5364.

SUPREME COURT OF THE UNITED STATES.

No. 197.

J. W. HODGE, JOHN W. HUNTER, HAYWOOD HUNTER, THOMAS COLEMAN, AND YOUNG COLEMAN, PL'FFS IN ER.,

vs.

JOHN A. WILLIAMS.

IN ERROR TO THE DISTRICT COURT U. S. FOR THE EASTERN DISTRICT OF TEXAS.

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Caption.

The United States of America, district court of the United States, eastern district of Texas, at Galveston, to wit:

At a term of the district court of the United States of America in and for the eastern district of Texas, begun and holden at the city of Galveston, in said district, on the first Monday in the month of January, one thousand eight hundred and fifty-eight, to wit, on the third day of the month of August of said year; present, the honorable John C. Watrous, judge of said court, Ben. McCulloch, Esq., United States marshal, George Mason, Esq., United States attorney, and James Love, clerk of said court, among other were the following proceedings, to wit:

JOHN A. WILLIAMS }
v.
JOHN W. HODGE. }

Be it remembered, that heretofore, to wit, on the 28th day of November, in the year of our Lord one thousand eight hundred and fifty-six, came the plaintiff herein, by Robert Hughes, his attorney, and filed his petition, which is in the words and of the following tenor, that is to say:

Petition.

United States of America, district of Texas, district court, at Galveston, January term, 1857, to wit:

To the honorable John C. Watrous, judge of the district court of the United States for the district of Texas aforesaid, presiding in the city of Galveston:

John A. Williams, a citizen and resident of the State of North Carolina, plaintiff, brings this his petition against J. W. Hodge, John H. Hunter, Haywood Hunter, Thomas Coleman, Young Coleman, citizens and residents of the county of San Patricio, and the State of Texas, defts.

And thereupon your petitioner would represent and complain unto your honor, that heretofore, to wit, on the 15th day of November, A. D. 1856, *at* to wit, in the district of Texas aforesaid, he was seized in his demesne as affee of, in, and to a certract tract or parcel of land situated, lying, and being in the county of San Patricio aforesaid, and district of Texas aforesaid, situated, described, and bounded as follows, to wit: On the left margin of the Chiltipin creek, extending from the said Chiltipin creek to

the leagues on Live Oak point, bounded on the east by the lands of the Empresarios, in the late colony of Powers and Hewetson, on the north by the said Chiltipin creek, on the west by lands of the citizens Polan and McCuley, and on the south by the lands which are on Corpus Christi bay, in the marshy plains of the Sera, containing five leagues, be the same more or less, with the hereditaments and appurtenances thereunto belonging or in anywise appertaining, and being so seized and possessed of the same, the said defendants afterwards, to wit, on the day and year last aforesaid, with force and arms, in the district of Texas aforesaid, entered in and upon, and then and there took possession of the said tract or parcel of land, with the hereditaments and appurtenances thereunto belonging, and then and there ejected, expelled, put out, and removed your petitioner therefrom, and kept him so ejected, expelled, put out, and removed for a long space of time, to wit, from thence hitherto, and other wrong then and there did, to the great injury of your petitioner; wherefore, he says he is damaged to the amount of ten thousand dollars, and therefore he brings this his suit, &c.

The premises considered, your petitioner prays your honor to grant unto your petitioner process of citation, directed to the marshal of the district of Texas aforesaid, commanding him to summon the said defendants to be and appear in this honorable court at the next term thereof, to be held at the court-room in the city of Galveston, on the first Monday in the month of January next, then and there to answer this petition, and to do further and receive what the said court may order and direct; and that after due trial according to the forms of law, he may have judgment for the recovery of the tract or parcel of land, with the hereditaments and appurtenances aforesaid, for his damages by reason of the trespass aforesaid, and for his costs in this behalf expended; and that he may have execution of said judgment, or that he may have such other or further relief, order, judgment, or decree as the nature of the case may require; and as in duty bound he will ever pray, &c. ROB. HUGHES, for Plaintiff.

Memo. This action is brought as well to try title as to recover damages. ROB. HUGHES, for Plaintiff.

And afterwards, on the 29th day of November, A. D. 1856, a citation issued against the defendants, in words and figures, as follows:

Citation.

United States district court, district of Texas.

The President of the United States of America to the marshal of the district of Texas, or any of his lawful deputies, greeting:

You are hereby commanded to summon J. W. Hodge, if he be

found in your district, to be and appear before the honorable the district court of the United States, at a court to be holden in and for the district of Texas, at the city of Galveston, on the first Monday of January next, to answer the petition and complaint of John A. Williams against J. W. Hodge, John W. Hunter, Haywood Hunter, Thomas Coleman, and Young Coleman, in an action of trespass to try title and for damages in the sum of ten thousand dollars, of which you will serve the defendant, J. W. Hodge, with the accompanying copy of said petition.

Witness the honorable John C. Watrous, judge of said court, and the seal of said court. Done at the city of Galves-
[L. S.] ton, the 29th day of November, A. D. 1856, and the 81st year of the independence of the United States of America.

JAMES LOVE, Clerk.

Upon which said writ of citation, the marshal made a return in words and figures, as follows:

Received Decr. 1st, 1856, and on the 19th day of December, 1856, I executed this writ by giving the within defendant, J. W. Hodge, a true copy of the same, and a copy of the petition certified by the clerk of this court.

BEN. McCULLOCH, U. S. M.
By JOHN W. HUGHES, Dpy.

And afterwards, on the 19th day of November, 1856, a writ of citation was issued, in words and figures as follows:

The United States district court, district of Texas.

The President of the United States of America to the marshal of the district of Texas or any of his lawful deputies, greeting:

You are hereby commanded to summon John W. Hunter, if he be found in your district, to be and appear before the honorable the district court of the United States, at a court to be holden in and for the district of Texas, at the city of Galveston, on the first Monday of January next, to answer the petition and complaint of John A. Williams against J. W. Hodge, John W. Hunter, Haywood Hunter, Thomas Coleman, and Young Coleman, in an action of trespass to try title, and for damages in the sum of ten thousand dollars, of which you will serve the defendant, John W. Hunter, with the accompanying copy of said petition.

Witness the honorable John C. Watrous, judge of said court, and the seal of s'd court. Done at the city of Galveston,
[L. S.] the 29th day of November, A. D. 1856, and the 81st year of the independence of the United States of America.

JAMES LOVE, Clerk.

On which said writ of citation, the marshal made return in words and figures, as follows:

Received December 1st, 1856; and on the 19th day of December, 1856, I executed this writ by giving the within named defendant, John W. Hunter, a true copy of the same, and a copy of the petition certified by the clerk of this court.

BEN. McCULLOCH, U. S. M.
By JOHN W. HUGHES, Dept.

And afterwards, on the 29th day of November, 1856, another writ of citation was issued in words and figures, as follows:

United States district court, district of Texas.

The President of the United States of America to the marshal of the district of Texas or any of his lawful deputies, greeting:

You are hereby commanded to summon Haywood Hunter, if he be found in your district, to be and appear before the honorable the district court of the United States, at a court to be holden in and for the district of Texas, at the city of Galveston, on the first Monday of January next, to answer the petition and complaint of John A. Williams against J. W. Hodge, John W. Hunter, Haywood Hunter, Thomas Coleman, and Young Coleman, in an action of trespass to try title, and for damages in the sum of ten thousand dollars, of which you will serve the said defendant, Haywood Hunter, with the accompanying copy of said petition.

Witness the honorable John C. Watrous, judge of said court, and the seal of s'd court. Done at the city of Galveston, [L. S.] on the 29th day of November, A. D. 1856, and the 81st year of the independence of the United States of America.

JAMES LOVE, Clerk.

And afterwards, the marshal made return on said writ of citation, in words and figures, as follows:

Received December 1st, 1856; and on the 19th day of December, 1856, I executed this writ by giving the within named defendant, Haywood Hunter, a true copy of the same, and a copy of the petition certified by the clerk of this court.

BEN. McCULLOCH, U. S. M.
By JOHN H. HUGHES.

And afterwards, on the 29th day of November, 1856, another writ of citation in this cause was issued, in words and figures, as follows:

United States district court, district of Texas.

The President of the United States of America to the marshal of the district of Texas or any of his lawful deputies, greeting:

You are hereby commanded to summon Thomas Coleman, if

he be found in your district, to be and appear before the honorable the district court of the United States, at a court to be holden in and for the district of Texas, at the city of Galveston, on the first Monday of January next, to answer the petition and complaint of John A. Williams against J. W. Hodge, John W. Hunter, Haywood Hunter, Thomas Coleman, and Young Coleman, in an action of trespass to try title, and for damages in the sum of ten thousand dollars, of which you will serve the defendant, Thomas Coleman, with the accompanying copy of said petition.

Witness the honorable John C. Watrous, judge of said court, and the seal of said court. Done at the city of Galveston, [L. S.] this 29th day of November, A. D. 1856, and the 81st year of the independence of the United States of America.

JAMES LOVE, Clerk.

And afterwards, the marshal made return on said writ of citation, in words and figures, as follows:

Received December 1st, 1856; and on the 19th day of December, 1856, I executed this writ by giving the within named Thomas Coleman, a true copy of the same, and a copy of the petition certified by the clerk of this court.

BEN. McCULLOCH, U. S. M.
By JNO. H. HUGHES, Dep'ty.

And afterwards, on the 29th day of November, 1856, another writ of citation issued in this cause, in words and figures, as follows:

United States district court, district of Texas.

The President of the United States of America to the marshal of the district of Texas or any of his lawful deputies, greeting:

You are hereby commanded to summon Young Coleman, if he be found in your district, to be and appear before the honorable the district court of the United States, at a court to be holden in and for the district of Texas, at the city of Galveston, on the first Monday of January next, to answer the petition and complaint of John A. Williams against J. W. Hodge, John W. Hunter, Haywood Hunter, Thomas Coleman, and Young Coleman, in an action of trespass to try title, and for damages in the sum of ten thousand dollars, of which you will serve the said defendant, Young Coleman, with the accompanying copy of said petition.

Witness the honorable John C. Watrous, judge of said court, and the seal of said court. Done at the city of Galveston, this 29th day of November, A. D. 1856, and the 81st year of the independence of the United States of America.

JAMES LOVE, Clerk.

And afterwards, on the sixth day of February, A. D. 1857, the

defendants, by their attorneys, filed their pleas in abatement, in words and figures, as follows:

District court of the United States, district of Texas, at Galveston.

JOHN A. WILLIAMS
v.
J. W. HODGE et als. } No. 632.

And now, the said J. W. Hodge, John H. Hunter, Heywood Hunter, Thomas Coleman, and Young Coleman, the defendants herein, come in their proper persons, and defend, &c., and say that the court here ought not to take further cognizance of the action of the said plaintiff, and has not in fact jurisdiction thereof, because they say that the said plaintiff is not the real party in interest in this action, but is only the nominal and colorable plaintiff, and that the real parties in interest and actual plaintiff in this action, for whom the said plaintiff is acting, and for whose use and benefit he brings this action, are now, and were, at the time of the commencement of this suit, citizens of the said State of Texas, all of which the said defendants are ready to verify; wherefore, they pray judgment, if the court will or ought to take further cognizance of this action, and for costs.

ALLEN & HALE, Attys. for Defts.

And now, the said J. W. Hodge, John H. Hunter, Haywood Hunter, Thomas Coleman, and Young Coleman, the defendants herein, again come and defend, &c., and say that the court here ought not to take further cognizance of the action of the said plaintiff, and has not in fact jurisdiction thereof, because they say that on the seventeenth day of May, in the year of our Lord one thousand eight hundred and fifty, one James Power, a citizen of the State of Texas, and since deceased, then claiming title to a portion, or undivided share of the tract of land described in the petition, by his indenture dated on the said day, assumed to convey his title to such portion or share, as well as the shares thereof claimed by other persons, for whom the said Power was not authorized to act, to Thomas M. League, then a citizen of the said State of Texas, in trust and for the declared purpose that the said League should commence and have commenced in this court such suits as might be necessary to establish his title to the tract of land in the said petition described, as well as other tracts mentioned in the said indenture; and when the litigation was ended, he should re-convey to the said Power, and the other persons for whom the said Power professed to be acting without authority, their heirs or assigns, two-thirds of the lands recovered in such suits, and the said indenture was in fact *was* only executed by, and took effect between the said Power and League, if indeed it ever had any legal effect, which the said defendants do

not admit; and thereafter the said League attempted to become a citizen of the State of Maryland, and caused to be commenced several suits in his own name, as citizen of the said State of Maryland, against of the said State of Texas, in order to establish his title, under said indenture, to the lands thereby assumed to be conveyed, in accordance with the conditions of the trust expressed therein; and while the said suits were pending, the said James Power died, leaving his widow, Tomasa Power, the executrix of his last will and testament, and several children, among whom are James Power and Dolores Wilder, all of whom, as well as his widow, as his said children, were at the time of his death, and at the time of the commencement of this suit, and still are citizens of the said State of Texas. And thereafter, the said League not succeeding in his attempt to maintain the said suits in his own name, on the fifth day of November, in the year of our Lord one thousand eight hundred and fifty-six, at the request of the said Tomasa Power, and acting through Robert Hughes as his attorney in fact, (but the said defendant do not admit the sufficiency of the power of the said attorney so to act, except for the purposes of this plea,) by his indenture dated the day last aforesaid, assumed to convey to the plaintiff in this action all the right, title, claim, and interest which was conveyed or passed to him, the said League, by the indenture first herein named, in and to certain tracts of land, including that tract in said petition described, but with the proviso and condition, that as the said indenture was made at the request of the said Tomasa Power, and the consideration thereof was for the benefit of the said Tomasa and her children, the children of the said James Power, deceased, she should have the right to purchase from the said plaintiff, his heirs and assigns, two-thirds of the lands mentioned in said last indenture, at any time after the expiration of five years from the date thereof, upon the payment, without interest, of two-thirds of the amount of the consideration of the said indenture, in cash, discount set off or otherwise.

And the said defendants further say, that on the fifth day of November, in the year last aforesaid, the said James Power and Dolores Wilder, the children of the James Power first herein mentioned, with John Wilder, the husband of said Dolores, by their indenture, dated on the day aforesaid, also assumed to convey to the said plaintiff all their right, title, and interest in and to the several tracts of land described therein, and in the indenture between the said League and said plaintiff, but with the condition and provisos, that the said plaintiff is to permit them, their heirs or assigns, at any time after the expiration of five years from the date of said indenture, to repurchase from the said plaintiff two-thirds of said lands, upon repaying to him in money, dis-

count, set off, or otherwise two-thirds of the consideration of said conveyance.

And the said defendants further say, that the consideration money expressed in the said two last mentioned indentures to the said plaintiff was not in fact paid, nor has it ever yet been paid, and that in consequence thereof, and of the legal effect of the said indenture between the said League and the said Power, and the said indentures between the said League and the said James Power, Dolores Wilder, and John Wilder respectively, and the said plaintiff, the said plaintiff was not at the time of the commencement of this suit, and is not at this time, the real and true owner of the title or claim of title originally vested in James Power, now deceased, to the said tract of land described in the petition, but that such title or claim of title never passed from said James Power, now deceased, to the said League, nor from the said League or the children of the said James Power to the said plaintiff, so as to make the said plaintiff the true owner thereof, and the real party in interest therein, but on the contrary remained in the said James Power until his death, and thereupon vested in his heirs, and so remained at the time of the commencement of this suit so vested in his heirs, who were then all citizens of the State of Texas.

And the said defendants further say, that the said plaintiff derives his title alone under and by the indentures in this plea described, and has no other interest in the land now sued for than he can claim under said indentures and the facts herein stated; and although he appears by the said indentures to have attempted to reserve to himself the sole interest to one-third of the lands which they purport to convey to him, yet that he has paid no consideration therefor, and in fact holds the same for the benefit and as secret trustee for Robert Hughes, and the other persons herein named, who were all at the time of the commencement of this suit citizens of the said State of Texas, all of which the said defendants are ready to verify; wherefore they pray judgment of the court here will or ought to take further cognizance of the action aforesaid and for their costs.

ALLEN & HALE, Attys. for Defts.

And the said defendants reserve the right to demur or plead in bar to the plaintiff's petition, in case their aforesaid pleas in abatement should be determined against them.

ALLEN & HALE, Attys. for Defendants.

This day personally appeared in open court Joseph F. Smith, a person known to me, who, after being by me duly sworn, says under oath, that in the month of January last he examined the records of the office of the clerk of the county court of Refugio county and State of Texas, and found no other conveyance of the land described in said plaintiff's petition from the said James

Power, deceased, to the said Thomas M. League, than the forementioned in the foregoing pleas; that he found no other conveyance of record in said county of said land from said League, the said surviving wife of said Power, deceased, said Wilder and wife, and the said James Power to the said John A. Williams, than the one mentioned in said pleas; that he was told by the clerk of said court that there was no other conveyance of said land to said Williams of record in said county from any other person; that he was informed a few days ago by said League that said Williams has no other title to said land than such as was conveyed to him by the conveyances mentioned in said pleas; that he has been informed and believes that the counsel for said plaintiff admits the same fact; and affiant says that all the allegations of said pleas are just and true, to the best of his knowledge and belief.

JOSEPH F. SMITH.

Sworn to and subscribed before me, this 6th day of February, A. D. 1857.

JAMES LOVE, Clerk.

And afterwards, on the 26th day of February, A. D. 1857, the court here made the following order in this cause, in words and figures as follows, to wit:

JOHN A. WILLIAMS
v.
J. W. HODGE et als.

On this day came the defendant, by his attorney, and on his motion it is ordered that the plaintiff shall, on or before the first day of the next term of this court, file in the clerk's office a good and sufficient bond, with security for costs.

And afterwards, on the 21st day of July, A. D. 1858, the plaintiff filed his demurrer to defendants' pleas, in words and figures as follows:

The United States of America, eastern district of Texas, to wit:

District court at Galveston, July term, 1858.

JOHN A. WILLIAMS
vs.
J. W. HODGE, JOHN H. HUNTER, HAYWOOD HUNTER, THOMAS COLEMAN, & YOUNG COLEMAN. } 632.—Trespass, &c.

And now comes the plaintiff aforesaid, by his attorney, and says the writ ought to have and maintain jurisdiction herein, notwithstanding any thing in the first plea of cognizance, by the defendants in this behalf pleaded, because he says the said plea of

cognizance, and the matters and things therein contained, are not sufficient in law to oust said jurisdiction, and this he is ready to verify; wherefore he prays judgment, &c.

And for further cause of demurrer, the said plaintiff sets down and shows the following, to wit:

First. The defendants in their said plea of cognizance aver that the plaintiff is not the real party in interest, but fail to state or aver who said real parties are.

Second. The said defendants in said plea of cognizance aver and state, that the persons, the real parties in interest, and for whose use said suit was brought, were at the time of the commencement of this action citizens of the State of Texas, but do not state who they are.

2. And again comes the plaintiff, by his attorney, and says that the court ought to have and maintain jurisdiction herein, notwithstanding any thing in the second plea of cognizance in this behalf pleaded, because he says the said plea of cognizance, and the matters and things therein contained, are not sufficient in law to preclude this court from having and maintaining said jurisdiction, and this he is ready to verify; wherefore he prays judgment, &c.

And for causes of demurrer the plaintiff assigns the following:

First. The said plea of cognizance purports to set up, for the purpose of ousting the jurisdiction of this court, certain statements and averments of fact, but such statements and averments of fact do not show any sufficient ground for such ouster.

Second. The said defendants by the said second plea attempt by way of inducement to set up the fact of the execution of a conveyance by James Power, deceased, in his lifetime of the lands in contest, and other lands to a certain Thomas M. League, in trust as in said plea set out, when the said conveyance and the averments in said plea contained show no such inducement, and are totally impertinent.

Third. The said defendants by said plea, set forth and show a conveyance from persons claiming to hold the land in contest to pltff., and under which, it is averred, he, said plaintiff, claims, and then aver that the purchase money, the consideration of said conveyance, was never paid; and then they say, that in consequence thereof, and of the legal effect of the conveyance from said James Power, deceased, to Thomas M. League, and of the other two conveyances in said plea specified, said plaintiff was not and is not the true owner of the title, or claim of title, originally vested in the said James Power, deceased, but that the true ownerships and title remained with the said James Power, deceased, and his heirs, when no such conclusion can be drawn from the premises, and for any thing that appears, there being valid conveyances to the plaintiff, which vested the title in him.

Fifth. The averments and statements in said plea of cognizance are rather a statement of the evidence by which to prove facts,

which may oust the jurisdiction of the court, than of the facts themselves.

ROB. HUGHES, for Plaintiff.

And now, after the sustaining of the demurrer to the pleas of cognizance aforesaid, and of the amendment of the first thereof, the said plaintiff denies the allegations in the first plea contained, and puts himself on the country.

ROB. HUGHES, for Plaintiff.

And afterwards, on the 21st day of July, A. D. 1858, the defendant filed an amendment to his plea, in words and figures as follows, to wit:

District court of the United States, district of Texas, May term, 1858.

JOHN A. WILLIAMS
v.
J. W. HODGE et als.

And now come the said defendants, by leave of the court, after the judgment upon the demurrer to their first plea to the jurisdiction, and amend their plea by inserting after the words "for whose benefit he brings this action," the following words, to wit: "Tomasa Power, James Power, John Wilder, and Dolores Wilder, his wife, and the other heirs of James Power, sr., whose names are further unknown to the defendants, and Robert Hughes," with the same effect as if the said words had been originally inserted in said plea.

ALLEN & HALE, Atty's for Def'ts.

And afterwards, on the 27th day of July, A. D. 1858, the plaintiff filed his bill of exceptions to the ruling of the court, in words and figures, as follows:

The United States of America, eastern district of Texas, to wit:

District court at Galveston, July term, 1858.

JOHN A. WILLIAMS
vs.
JOHN W. HODGE, JOHN A. HUNTER, HAYWOOD HUNTER, THOMAS COLEMAN, and YOUNG COLEMAN. } Trespass to try title.

Be it remembered, that on this 27th day of July, 1858, upon the preparation and settlement of the demurrer to evidence taken by the plaintiff, and upon setting down and inserting in the record the evidence adduced by the defendants in support of their plea to the jurisdiction of the court; and thereafter, the defendants, by their counsel, objected to being compelled to join in the

demurrer, until the following facts were admitted, to wit: That the nominal consideration of the deeds given in evidence from Thomas M. League, by his attorney in fact, Robert Hughes, and from James Power, and John Welder, and Dolores, his wife, to John A. Williams, both dated the third day of November, A. D. 1856, was enormously disproportionate to the intrinsic value of the land, and that no consideration money was ever paid for said conveyances; that one-third of the interest nominally vested in said John A. Williams, by the before mentioned two deeds of conveyances, is held by him for the benefit of Robert Hughes; and thereupon, the court required the plaintiff to admit said facts upon the record, to which said plaintiff, by his counsel, objected. Under the direction and requirement of the court, made and entered an admission of said facts on the record, as a part of his demurrer to the evidence; to all of which the said plaintiff, by his attorney, at the time excepted and excepts, and prays that this his bill of exceptions be signed, sealed, enrolled, and made part of the record herein, which is done accordingly.

JOHN C. WATROUS. [SEAL.]

And afterwards, on the 30th day of July, A. D. 1858, the plaintiff, by his attorney, filed the following demurrer, in words and figures as follows, to wit:

The United States of America, eastern district of Texas, to wit:

District court at Galveston, July term, 1858.

JOHN A. WILLIAMS
v.
JOHN W. HODGE et als. } Trespass to try title, &c.

Be it remembered, that on this 29th day of July, A. D. 1858, this action was brought on for trial before a jury upon the issues made therein to the jurisdiction of the court; and thereupon, after the plt'ff had read his petition, and stated his case made thereby, the defendants, by their counsel, read their plea, and thereafter proceed to and did offer as evidence, and read to the jury the following evidence in their behalf:

First. The said defendants read as evidence in their behalf a conveyance in fee upon the trusts, and for the uses and purposes therein specified, from James Power, now deceased, and James Hewetson, by his attorney in fact, James Power; and the said James Power, acting for and in behalf of the representatives of Duncan S. Walker, deceased, to Thomas M. League, dated the 17th day of May, A. D. 1850, which is herewith filed, marked A, and made a part of this statement, and which deed is admitted to be a copy of the original, which was a genuine document legally proven and recorded.

Second. The said defendants then read as evidence in their be-

half an agreement in writing under seal, of the date of the 25th of August, 1856, between James Power, John Wilder, and Dolores, his wife, and Tomasa Power, of the one part, and Robert Hughes, which is herewith filed, marked B, and made part of this statement, which is admitted to be a true copy of the original, which was duly proven and recorded.

Third. The said defendants then read in their behalf a conveyance in writing under seal, of the date of the 5th day of November, 1856, from James Power and John Wilder, and Dolores, his wife, to John A. Williams, which is herewith filed, marked C, and made a part of this statement, and which is admitted to have been signed, sealed, and delivered for the purposes therein expressed, and has been duly proved and recorded.

Fourth. The said defendants then read as evidence in their behalf a conveyance in writing under seal, of the 5th day of November, 1856, from Thomas M. League, by his attorney in fact, Robert Hughes, to John A. Williams, which is herewith filed, marked D, and made part of this statement, and which it is admitted was signed, sealed, and delivered by said League by his attorney in fact, said Hughes.

Fifth. The said defendants then read as evidence in their behalf a power of attorney from Thomas M. League to Robert Hughes, of the date of the first day of July, 1856, which is herewith filed, marked E, and made part of this statement, which is a true copy of the original, which was duly proven and recorded.

Sixth. The said defendants then read as evidence in their behalf an official translation from the general land office, at Austin, of the original record of the title of possession, issued by the commissioner in the colony of Power and Hewetson, dated the 20th day of November, 1834, to Francisco del Prado, which translation is herewith filed, marked F, and made a part of this statement.

Seventh. The said defendants then read as evidence in their behalf a copy of an order made by the court of Refugio county, duly authenticated, made at the August term, 1856, herewith filed, marked G, and made part hereof.

The plaintiff then proved by Thomas M. League, a witness in their behalf, that he, witness, did not know Williams, had never seen him, never had any correspondence whatever with him, never received any money whatever from him or Judge Hughes or any body else as a consideration of executing by my attorney in fact the conveyance of the lands to Williams; never knew any thing about the conveyance until I heard it read a day or two ago, on another trial in this court; that he said witness was desirous of getting rid of the conveyance made to him by James Power, of the 17th of May, 1850, for several reasons; he had been deceived by Power in entering into the agreement. It had been represented to him that Power could control the whole of the

lands, and he, witness, was to carry on the suits for all of them, and have one-third of them as a compensation, but it turned out that Power could not control all of the lands conveyed, but only an *undved* portion belonging to himself. Witness has spent a good deal of money and had a great deal of trouble in the suits, and his wife was opposed to any further continuance in the business. He wished also to return to Texas to live, and had not received one five hundredth part of what he had spent, and never expected to get any money for getting out of the business. When the decision of the supreme court was rendered against him he was rejoiced at it, as it gave him an opportunity of getting out of the business, and he authorized Judge Hughes as his attorney in fact, giving him a power of attorney, to get out of it and rescind the contract with Power, but he never got a dime for any interest in the lands in any way; don't suppose that he now has any interest in the lands included in the conveyance from Power to him, all which is admitted to be true.

The said defendants then proved by Robert Hughes, a witness in their behalf, that he, witness, was counsel for the plaintiff, and had been since the commencement of the suit and before, and also the counsel of Mrs. Tomasa Power and James Power, and John Wilder and Dolores, his wife, in relation to other suits commenced in the State courts in their names, but not in relation to this suit or any of the lands embraced in the deeds to Williams. The two deeds of Williams given in evidence form a part of the chain of title of the plaintiff, and it is only through these two deeds that the plaintiff claims a right to the land sued for. He executed the deed from League to Williams. He never heard Mr. Power or any of the children of James Power, deceased, say anything about the payment of any consideration of the deeds. He does not know that they received any money from Williams for the deeds. Williams married a niece of witness's deceased wife; is well acquainted with him. Mrs. Tomasa Power had four children, according to witness's recollection; one, the eldest, married to Judge Lambert; two other daughters and a son. James Power, sr., was married twice; his first wife, Dolores, was married to him in the town of San Patricio, 1832, as witness believes, and had two children, Dolores and James. Mrs. Power and her children, James Power, and John Wilder and Dolores, his wife, and witness were all citizens of the State of Texas at the time of the death of James Power, who died, according to witness's recollection, about four years ago, and have ever since been citizens. James Power, deceased, was a citizen of Texas on, at, and before the 17th day of May, 1850, and so continued up to his death. The witness prepared the original draft of the two deeds to Williams; they were afterwards copied by some other person. All of the lands embraced in the deeds to Williams were granted by Coahuela and Texas in the fall of 1834, and before the marriage

of Tomasa Power. The lands embraced in the deeds to Williams amount to about thirty-nine leagues. All except the land embraced in this suit, if the title was good, would be worth one dollar per acre; that in this suit fifty cents per acre. There was no authority from the representatives of Duncan S. Walker or Hewetson to James Power for executing the conveyances of May 17, 1850. Witness had an agreement with League in reference to suits brought in pursuance of that conveyance, as to his fee, by which witness was to receive one-half of the third reserved by League, and League was to pay the expenses of the suits. Witness and his son are sureties for costs of this suit. Witness stated that he was not the general attorney of the heirs of James Power, but was their attorney in particular transactions. This suit is commenced on the title of Del Prado, all which is admitted to be true, and this was all the proof, and the plaintiff gave no evidence to the jury.

And now, on the said 27th day of July, 1858, cometh said plaintiff, by his attorney, after the giving of the evidence as aforesaid, and says that notwithstanding the evidence and proof aforesaid, this court ought to hold and maintain jurisdiction herein, and to hold cognizance of this action, because he says the said evidence and proof, and the matters things therein contained, and what the court may deduce therefrom, and what the same conduces to *proof*, are not sufficient in law to oust the jurisdiction of this court, and this he is ready to verify; wherefore, he prays judgment, &c.

ROB. HUGHES, for Plaintiff.

Exhibit A, referred to in the foregoing demurrer to defendants' evidence.

State of Texas, county of Galveston.

This indenture, made and entered into this the seventeenth (17) A. D. eighteen hundred and fifty, between James Power, of the county of Refugio, and State of Texas, and James Hewetson, of the State of Coahuela, and republic of Mexico, by his attorney in fact, James Power; and the said James Power, acting for and in behalf of the representative of Duncan S. Walker, deceased, of the one part, and Thomas M. League, of the city of Galveston, and State of Texas aforesaid, of the other part, witnesseth: That the said Power and Hewetson, and the said Power acting as aforesaid, for and in consideration of the sum of one dollar, to him in hand paid at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, have given, granted, bargained, sold, and conveyed, and do by these presents give, grant, bargain, sell, and convey unto the said Thomas M. League, and to his heirs and assigns forever, all those certain tracts or parcels of land which are situated, lying, and being in the counties of San Patricio, Refugio, and Calhoun,

in the State of Texas aforesaid, and in the boundary of which was formerly the colony of Hewetson and Power, and which were granted by the proper authority of the State of Coahuela and Texas to said Hewetson and Power, or either of them, or which were granted by the said proper authorities by the State of Coahuela and Texas to other persons, and by those other persons sold to said Hewetson and Power, or either of them, together with all other lands within the said counties of Refugio, San Patricio, and Calhoun, and within the boundaries of the colonies aforesaid, and to which said Hewetson, and Power and Walker are entitled, except so much and such part thereof as has heretofore been donated or agreed to be donated by said Hewetson and Power, acting as aforesaid, or which has heretofore been sold or otherwise disposed of, and except also the Salt Lake on the four leagues granted, on Live Oak Point, and except also the lands purchased by said Power of the heirs of Mr. and Mrs. Roach, containing one league and one *laver*, with all the hereditaments and appurtenances thereunto belonging, or in anywise incident or appertaining, and all the estate, right, and title of the said Power and Hewetson, and of said Walker's representative as aforesaid, and of each of them of, in, and to the same, and every part thereof: To have and to hold unto the said Thomas M. League, his heirs and assigns forever, in trust, however, and for the purposes following, that is to say, that the said Thomas M. League will commence and have commenced in the district court of the United States of the district of Texas, all such suit or suits as may be necessary to settle the title to said lands, and will prosecute said suits to final determination; and should said suit or suits, or either of them, be decided adversely to him in said court, he will take a writ of error on appeal to the Supreme Court of the United States, and there have the judgment or decree reviewed, and when the litigation is finally determined, he will convey two-thirds of the lands recovered, and to which the titles is settled to said Power and Hewetson, and the representatives of said Walker as aforesaid, and their heirs and assigns, and until said conveyance is made, will hold said lands in trust for the use and benefit of said parties; and said League agrees to pay one-third of the expenses of litigation heretofore incurred as to said land, which one-third is agreed to amount to the sum of one thousand dollars, which shall remain a charge and lien upon that portion of said land, which shall remain to said League after the conveyance of two-thirds to said parties as aforesaid; and said League will, from time to time, have all the litigation heretofore or hereafter to be commenced as to said lands attended to by council employed by him, and will pay all the cost and expenses of litigation, and all other expenses relating to the same, which may hereafter accrue, and all lawyers fees due, and to become due; and it is understood that said League may make sales, from

time to time, of portions of said land, for the benefit of the parties, by and with the written permission of said Power, for himself and those for whom he is acting, or his representative, and all moneys or proceeds of such sales to be divided between said parties, in the proportion of two-thirds to said Power, and those for whom he is acting, and one-third to said League; and the said for himself, and those for whom he is acting as aforesaid, may in like manner make sales, with the consent in writing of said League, the proceeds to be divided in the proportions as aforesaid. The conveyance of said two-thirds aforesaid, is to be made *freed* and discharged of all cost, expenses, and charges of every description whatever to the said Power, and those for whom he is acting as aforesaid; and it is understood, that the conveyance is in no manner to interfere with the right of the parties, under and by virtue of a mortgage on part of said land for the benefit of said Hewetson; and it is further understood, that all improvements now on said lands are to enure to the use and benefit of the said James Power; and when the litigation is ended, and said two-thirds of said lands conveyed to said Power, and those for whom he is acting, the title papers for said lands shall be returned to said Power; and in a partition between said Power, and those for whom he is acting, and the said League, the same shall be according to quantity, quality, and value, and should any difficulty occur under the conveyance, the same shall be settled by arbitrators; the said Power, and those for whom he is acting, selecting one person as an arbitrator, and the said League another; and should the said arbitrators disagree, they shall choose an umpire who shall decide between them, and an award when made shall be final.

In testimony whereof, the parties to these presents have hereunto set their hands and seals the day and year first hereinbefore written.

JAMES POWER, [SEAL.]
for himself, and for the representative of
Duncan S. Walker.
JAMES HEWETSON, [SEAL.]
By his attorney in fact,
JAMES POWER.
THOMAS M. LEAGUE. [SEAL.]

The words of in the second page interlined before signed.

Signed, sealed, and delivered in presence of—
Witness, JAMES P. NASH,
A. M. HUGHES.

State of Texas, county of Galveston.

Before me, James P. Nash, a notary public in and for the county of Galveston, duly commissioned and authorized to prac-

tice, personally appeared James Power, acting for himself, and the legal representative of Duncan S. Walker, deceased, James Hewetson, by his attorney in fact, James Power, and Thomas M. League, known to me, parties to the foregoing instrument of writing, who acknowledged they signed, sealed, and delivered the same for the purposes therein set forth.

In testimony of which, I hereunto set my hand, with the im-
[L. S.] press of my official seal, this 18th day of May, A. D. 1850.

JAMES P. NASH,
Notary Public, county of Galveston.

State of Texas, county of Calhoun.

I, William P. Melby, clerk of the county court in and for the county of Calhoun, and State aforesaid, do certify that the foregoing instrument of writing, comprising three pages, and a fraction of page, is a true copy from the records of my office of the original instrument, to be found on page 60, 61, 62, in book of deeds B.

In faith of which, I grant these presents under my signature and seal of office, at Lavana, the 13th day of August, A. D. 1850.

WM. P. MELBY,
Calhoun county clerk.

Exhibit B, referred to in plaintiff's demurrer.

Memorandum of an agreement made and entered into this 25th day of August, A. D. 1856, between James Power, and John Wilder, and Dolores, his wife, and Tomasa Power, widow and relict, and executrix of the last will and testament of James Power, late of Refugio county, and State of Texas, deceased, of the one part, and Robert Hughes, of the city of Galveston, of the other part, witnesseth: That whereas the said James Power, John Wilder, and Dolores, his wife, by descent from the deceased mother, the first wife of the said James Power, deceased, claims to have an interest of one-half of, in, and to all the land claimed or owned by the said James Power, deceased, in the counties of Refugio, San Patricio, and Calhoun, in the State of Texas aforesaid; and the Tomasa Power having been the second wife of said Power, and her children by said Power being minors, claim the other half of the said land owned by said James Power, deceased, in said counties aforesaid; and whereas the title claimed by said James Power, deceased, to said is unsettled and in dispute, and the said James Power, and Wilder and wife, and the said Tomasa Power, for herself and children, have not the means with which to carry on the litigation necessary to settle said title to said lands, and they have employed said Robert Hughes to commence and prosecute all suits necessary to settle said title to said lands, and to defend all actions brought by others,

which he engages and promises to do, and to pay all costs and expenses of litigation, whether or prosecuting or defending, in consideration whereof, said James Power, Wilder and wife, and Tomasa Power, for herself and children, agree that Thomas M. League, who now has the legal estate in and to the lands claimed by said Tomasa and children aforesaid, shall convey the same to them, said Tomasa and her children, two-thirds thereof to be held for their own benefit, and other one-third for the benefit of said Robert Hughes, and to be conveyed to him in fee upon the termination of the litigation aforesaid, or as he may elect, a conveyance to be made to him of one-third of any one or more of the tracts, from time to time, as to which the litigation may be settled and ended; and the said parties further agree, that the centre one-third, divided by lines from north to south, of the two and one-half leagues of the aforesaid land claimed by them on the San Antonio river, which part and parcel of the premium lands granted to James Power and James Hewetson, or one-third part of said two and a half leagues of land which belong to them, shall and may be reserved by said Robert Hughes, as a part of the one part *part* of said lands to be conveyed to said Hughes; and James H. Hughes, who is now in possession of said centre one-third of said two and one-half leagues, shall continue to hold and enjoy the same as long as said Robert Hughes may require; and the said centre one-third shall in due time be conveyed to said Robert Hughes or such person as he may direct; and in like manner, said James Power, and Wilder and wife, agree that at the termination of said litigation, they will convey one-third of their interest in said lands to said Hughes, in consideration of his services aforesaid. This agreement does not embrace any land granted to James Power, deceased, or to James Power and James Hewetson, by virtue of concessions in sale of eleven leagues, under the 24th article of the colonization of the 24th day of March, 1825, except four leagues in Live Oak Point, and one at Copano, including the town of Copano.

In testimony whereof, the said parties aforesaid hereunto set their hands and seals the day and year first above written.

JAMES POWER, [SEAL.]
JOHN WILDER, [SEAL.]
DOLORES WILDER, [SEAL.]
TOMASA POWER, [SEAL.]
ROBERT HUGHES. [SEAL.]

Signed, sealed, and delivered in presence of—
WALTER LAMBERT,
JOHN P. THOMPSON,
JAMES POWER,
TOMASO POWER,
MICHAEL WHEELAN,
P. SHELLY.

The State of Texas, county of Refugio.

Before me, P. Shelly, clerk of the county court in and for the county and State aforesaid, personally came and appeared James Power, John Wilder, Dolores Wilder, Tomasa Power, and Robert Hughes, parties to the above instrument of writing of the date of the 25th day of August, 1856, and acknowledged separately and individually that they had executed, signed, sealed, and delivered the same for the purposes therein stated. Also appeared Dolores Wilder, wife of John Wilder, who, having been examined by me privily and apart from her said husband, and having the above instrument of writing fully explained to her, she, the said Dolores Wilder, acknowledged that she had willingly signed, sealed, and delivered the same of her own free will and accord for the uses, purposes, and consideration therein expressed, and that she wished not to retract it..

In testimony whereof, I have hereunto set my hand and the seal of the county court of same county, at office in Refugio, this ninth day of August, A. D. 1856.

[SEAL.]

P. SHELLY, Clerk C. C. R. C.

The State of Texas, county of Refugio.

I, P. Shelly, clerk of the county court in and for the county and State aforesaid, do hereby certify that the foregoing instrument of writing was filed for registration in my office the twenty-sixth day of August, A. D. 1856, at 9 o'clock a. m., and duly recorded this fifth day of November, A. D. 1856, at four o'clock p. m., in book C, No. 191, pages 225 and 226 of the record of deeds of said county.

Witness my hand and seal of the county, at office in Refugio, the day and date last above written.

[SEAL.]

P. SHELLY, Clerk C. C. R. C.

The State of Texas, county of Refugio.

I, P. Shelly, clerk of the county court of Refugio county, in the State aforesaid, do hereby certify that the annexed and foregoing instrument of writing is a true and correct copy of that on record, in book E, No. 191, pages 225 and 226 of the record of deeds in my charge.

In testimony whereof, I have hereunto set my hand and the seal of the county court of said county, at office in Refugio, this the ninth day of May, A. D. one thousand eight hundred and fifty-seven.

P. SHELLY, Clerk C. C. R. C.

Exhibit C, referred to in plff's demurrer.

This indenture, made and entered into this 5th day of November, A. D. 1856, between James Power, of the county of Refugio, and John Wilder and Dolores, his wife, of the county of San Pa-

tricio, all of the State of Texas, of the one part, and John A. Williams, of the State of North Carolina, of the other part, witnesseth: that the said James Power, John Wilder, and Dolores, his wife, for and in consideration of the sum of one thousand dollars, to him in hand paid at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, have given, granted, bargained, and sold, and by these presents do give, grant, bargain, and sell unto the said John A. Williams and to his heirs and assigns forever, all the right, title, claim, and interest which they have in and to the following tracts or parcels of land, to wit: One tract of eleven leagues, more or less, situated, lying, and being in the county of San Patricio, and State of Texas aforesaid, which was granted on or about the 27th day of September, 1834, by the government of the State of Coahuela and Texas, by and through its proper officers, to James Power, deceased, and purchased from and under a certain Francisco de la Pina. Also eleven leagues, more or less, in two parcels, granted by the said State of Coahuela and Texas to Francisco del Prado, by virtue of a concession in sale under the said twenty-fourth article of said colonization law, situate, lying, and being in the county of San Patricio aforesaid. Also, all those certain tracts or parcels of land situated, lying, and being in the counties of San Patricio and Refugio aforesaid, which were granted by the said government of Coahuela and Texas by its proper officers as aforesaid to James Power and James Hewetson, or either of them, in and by a concession in sale made by the said government of Coahuela and Texas, under and by virtue of said twenty-fourth article of said colonization law of the 24th day of March, 1825, of eleven leagues to each, with the hereditaments and appurtenances thereunto belonging or in anywise appertaining, and all the estate, right, and title of them the said James Power and John Wilder, and Dolores, his wife, of, in, and to the same, and every part and parcel thereof: to have and to hold the said tracts or parcels of land, with the hereditaments and appurtenances thereunto belonging or in anywise appertaining, unto him, the said John A. Williams, his heirs and assigns, to his and their only proper use, benefit, and behoof forever: provided, however, and there is excepted from the operation of this conveyance four leagues on Live Oak point, and one league at Copano, including the town of Copano: provided, further, and it is hereby to be understood, that in consideration of the smallness of the consideration of this conveyance, the said John A. Williams is to permit the said Power, and said John Wilder, and Dolores, his wife, their heirs and assigns, should they desire so to do, at any time after the expiration of five years from this date, should they be desirous to do so, to re-purchase from him, the said John A. Williams, his heirs or assigns, two-thirds of the land hereby sold and conveyed, upon

repaying to him in money, discount, set off, or otherwise, two-thirds of the consideration of this conveyance.

In testimony whereof, the said James Power and John Wilder, and Dolores, his wife, have hereunto set their hands and seals, the day and year first hereinbefore written.

JAMES POWER, [SEAL.]
JOHN WILDER, [SEAL.]
DOLORES WILDER. [SEAL.]

Signed, sealed, and delivered in presence of—
P. SHELLY,
J. M. D. CRIGHTS,
MICHAEL WHEELAN.

State of Texas, county of Refugio.

Before me, P. Shelly, clerk of the county court in and for the county and State aforesaid, personally came and appeared James Power, John Wilder, and Dolores Wilder, and acknowledged that *the* executed, signed, and delivered the above instrument of conveyance to John A. Williams, for the uses, purposes, and considerations therein set forth. Also came and appeared Dolores Wilder, the wife of the aforesaid John Wilder, who, having been examined by me privily and apart from her said husband, and having the above instrument of writing fully explained to her, she, the said Dolores Wilder, acknowledged that she willingly signed, sealed, and delivered the same of her own free will and accord, for the uses, purposes, and considerations therein expressed, and that she wished not to retract it.

In testimony whereof, I have hereunto set my hand and the seal of the county court of said county, at office in Refugio, this, the 8th day of November, A. D. one thousand eight hundred and fifty-six.

P. SHELLY, Clerk C. C. R. C.

State of Texas, county of Refugio.

I, P. Shelly, clerk of the county court of Refugio county, do hereby certify that the foregoing instrument of writing was filed for registration this third day of July, A. D. 1857, at 10 o'clock a. m., and duly recorded the same day at 2 o'clock p. m., in book F, pages 109 and 110 of the record of deeds in my office.

Witness my hand and the seal of the county court of said county, at office in Refugio, the day and date above written.

P. SHELLY, Clerk C. C. R. C.

Exhibit D, referred to in plaintiff's demurrer.

This indenture, made and entered into this 5th day of November, A. D. 1856, between Thomas M. League, of the city of Baltimore, and State of Maryland, of the one part, and John A. Wil-

liams, of the State of North Carolina, of the other part, witnesseth: that the said Thomas M. League, for and in consideration of the sum of five hundred dollars, to him in hand paid at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, hath granted, bargained, and sold, and by these presents doth grant, bargain, and sell unto the said John A. Williams, and to his heirs and assigns forever, all the right, title, claim, and interest which was conveyed in part to him by certain conveyance in writing under seal executed by James Power, deceased, acting for himself and others, to said Thomas M. League, under date of the seventeenth day of May, A. D. 1856, in and to the tracts or parcels of land following, that is to say, eleven leagues, more or less, situate, lying, and being in the county of San Patricio, and State of Texas aforesaid, granted to said James Power, now deceased, under and by virtue of a concession in sale to a certain Francisco de la Pena; also, eleven leagues, more or less, also situate, lying, and being in the said county of San Patricio, in two parcels, and granted under and by virtue of a concession in sale to a certain Francisco del Prado; and twenty-two leagues, more or less, in several parcels, situate, lying, and being in the said county of San Patricio and in the county of Refugio, in the State of Texas aforesaid, granted to said James Power, deceased, and James Hewetson, by virtue of a concession in sale of eleven leagues to each of them, excepting and reserving out of said twenty-two leagues four leagues thereof on Live Oak point, and one league on Copano, including the town of Copano, with the hereditaments and appurtenances thereunto belonging, or in anywise appertaining, and all the estate, right, and title of him, the said Thomas M. League, of, in, and to the same, and every part and parcel thereof: to have and to hold all and singular the tracts or parcels of land aforesaid, with the exception and reservations aforesaid, to him, the said John A. Williams, his heirs and assigns, to his and their only proper use, benefit, and behoof forever: provi'd, however, and it is hereby understood, that this conveyance being made at the request of Mrs. Tomasa Power, executrix of the last will and testament of said James Power, deceased, in writing, and the consideration of said conveyance being for the benefit of said Tomasa Power and her children, the children of said James Power, deceased, at the request of said Tomasa Power, acting for herself and her said children, and in consideration of the smallness of the consideration of this conveyance, the said Tomasa Power, executrix as aforesaid, acting for herself and in behalf of her said children, may and has this right, should she desire and elect so to do, to purchase from said John A. Williams, his heirs and assigns, two-thirds of the land hereby conveyed, at any time after the expiration of five years next after the present date, then the pay-

ment, without interest, of two-thirds of the amount of the consideration of this conveyance, in such discount, set off, or otherwise.

In testimony whereof, the said Thomas M. League hath hereunto set his hand and seal, this, the day and year first hereinbefore written.

THOMAS M. LEAGUE, [SEAL.]
By his atto. in fact,
ROB. HUGHES.

Signed, sealed, and delivered in presence of—
P. SHELLY,
J. M. DOUGHERTY.

Exhibit E, referred to in plaintiff's demurrer.

Know all men by these presents, that I, Thomas M. League, of the city of Baltimore, in the State of Maryland, for divers good causes and considerations, me thereto moving, have nominated, constituted, and appointed, and by these presents do nominate, constitute, and appoint Robert Hughes, of the city of Galveston, my true and lawful attorney in fact for me, and in my name to rescind by agreement with the representatives of James Power, deceased, late of the county of Refugio, in the State of Texas, an agreement heretofore entered into by and between said Power and myself, made in the year one thousand eight hundred and fifty, under and by virtue of which said Power conveyed to me certain lands in the counties of San Patricio, Refugio, and Calhoun, in said State, upon the terms in the conveyance set out, upon such terms as may be agreed upon, it being understood that I am not to pay or become responsible for any money or other thing, and to re-convey the estate conveyed aforesaid, hereby ratifying and confirming what my said attorney may do in the premises by virtue of these presents.

Witness my hand and seal the 1st day of July, 1856.

THOMAS M. LEAGUE. [SEAL.]

Witness, A. M. HUGHES,
THOMAS D. CHAPMAN.

The State of Texas, county of Galveston.

Before me, Oscar Farish, clerk of the county court of Galveston county, this day appeared Archibald M. Hughes, to me known, who being sworn, says he saw Thomas M. League sign and execute the within instrument of writing, and that he, at the request of said League, signed his name as witness thereto.

Given under my hand and seal of said county court, at Galves- [SEAL.] ton, this 18th day of September, A. D. 1856.

OSCAR FARISH, Clerk.

The State of Texas, county of Refugio.

I, P. Shelly, clerk of the county court in and for the county and State aforesaid, do hereby certify that the foregoing instrument of writing was filed for registration in my office this third day of December, A. D. 1856, at four o'clock p. m., and duly recorded this 8th day of December, A. D. 1856, 5 o'clock p. m., in book E, No. 201, pages 239 and 240 of the record of deeds of said county.

Witness my hand and the seal of the county court of said county, [SEAL.] at office in Refugio, this, the day and date above written.

P. SHELLY, Clerk C. C. R. C.

The State of Texas, county of Refugio.

I, P. Shelly, clerk in and for the county court for said county, hereby certify that the above and foregoing instrument of writing is a true and correct copy of that on record in my office, as recorded in book E, No. 201, pages 239 and 240 of the record of deeds.

Witness my hand and the seal of the county court of said [SEAL.] county, at office in Refugio, this ninth day of May, A. D. 1857.

P. SHELLY, Clerk C. C. R. C.

Exhibit F, referred to in plaintiff's demurrer.

Mr. Commissioner: The C. James Power, in the name of my partner, Mr. James Hewetson, both empresarios of this colony, before you, in the most proper form of proceeding, says: that my partner being the attorney of the citizen Francisco del Prado, as appears by the accompanying of attorney, on three successive leaves, in compliance therewith, he desires to locate the concession of eleven sitios of land, which said Prado acquired in class of purchaser of the supreme government of the State, as also appears by the document which I present on two necessary leaves, in view thereof; and I being at the same time the attorney of this party and the partner of the other, ask and pray you to approve of the location of the said eleven sitios of land on the Chiltipin creek, and above the Nueces, that you may be pleased to issue the corresponding title. I ask justice, &c.

JAMES POWER.

Refugio, 25th of October, 1834.

Refugio, 20th November, 1834.

Attending to the representation of the petitioner as the attorney, substitute of the citizen Francisco del Prado, relative to the location within this colony of the quantity of eleven sitios, which this party acquired by purchase of the supreme government of the State, according to its decree of the 22d of January of the passed year of 1831, and which I certify to have seen, I adjudge

said sitios, previously making the corresponding surveys; thus I provide order and sign, with those of my assistance. I certify.

JOSE JESUS DE VIDAURI,
Assisting, VOR LOUPUY.

Assisting:
JUAN DUNN.

In the same place, day, month, and year I, the said commissioner, in view of my decree which precedes, adjudge in form to the party interested, citizen Francisco del Prado, the eleven sitios of pasture land, which by purchase he has acquired of the supreme government of the State, of which five sitios on the Chiltipin creek, on its right margin, and in consequence of being marshy lands, were elongated to the oak timber, adjoining on the east the lands of the Empresarios, on the north by the said creek, on the west by the citizen Polan and McAuly, and on the south by the lands on Corpus Christi, on the marshy prairies of the bay, and the other six on the Nueces river, which being united compose a front of 8,484 Mexican varas, and running back on both sides 15,000 varas, bounded on the north by vacant lands, on the west by the same, on the south by the said river, on the east by the citizen Jeremeas Villareal. In virtue thereof, using my authority, in the name of the supreme powers of the Mexican nation and of the State, I put him in possession of said sitios of pasture land, which his attorney took quietly and pacifically, without any opposition whatever, and performing all the acts of true possession with which, and being well informed of the obligation he is under, he signed with me and those of my assistance. I certify.

JOSE JESUS DE VIDAURI,
SANTIAGO POWER,
Assisting, VOR LOUPUY.

Assisting:
JUAN DUNN.

Note.—On this date the petition was attached to the manuscript record of titles on this corresponding leaf of common paper, void of the seal for its continues.

A. RUBRICK.

General Land Office, State of Texas.

I, E. Sterling C. Robertson, translator and recorder of Spanish deeds in the general land office of said State, bonded and sworn, certify the foregoing to be a correct translation of the original document on file in this office. Given under my hand at the city of Austin, on the 14th day of May, A. D. 1850.

E. STERLING C. ROBERTSON,
Translator.

General Land Office, State of Texas.

I, George W. Smyth, commissioner of the general land office of said State, certify that E. Sterling C. Robertson, whose name is signed above, is the translator and recorder of Spanish deeds in this office, bonded and sworn.

In testimony whereof, I have hereunto set my hand and caused the seal of said office to be affixed, at the city of Austin, on the 14th day of May, A. D. 1850.

[SEAL.]

GEO. W. SMYTH, Commissioner.

Exhibit G, referred to in plaintiff's demurrer.

County court, Refugio county, for the settlement of deceased persons and minors' estate, August term, 1856.

Estate of James Power, deceased.

Upon application of Tomasa Power, (by Robert Hughes,) executrix of the last will and testament of James Power, deceased, it is ordered that she have leave to rescind the agreement between said James Power and Thomas M. League, of the 17th day of May, 1851, upon such terms as may be agreed upon in regard to such rescision; and it is further ordered, that said Tomasa Power be and is hereby authorized to employ counsel to commence and prosecute and defend such suit or suits as may be necessary to settle the title to real estate in the counties of San Patricio, Refugio, and Calhoun, which belonged to the estate of said James Power, deceased, upon such terms as may be agreed upon, and in compensation thereof may agree to convey to such counsel portions of said land to such extent as may be stipulated.

The State of Texas, county of Refugio.

I, P. Shelly, clerk of the county court in and for the county and State aforesaid, do hereby certify that the above is a true copy of the order of the honorable the county court of Refugio county, had in the estate of James Power, deceased, at the August term thereof, A. D. 1856, as taken from the minutes of said court.

In testimony whereof, I have hereunto set my hand and affixed the impress of the seal of said county court, at office, this the eleventh day of February, A. D. one thousand eight hundred and fifty-seven.

P. SHELLY, Clerk C. C. R. C.

And afterwards, on the 30th day of July, 1858, the defendants *his* objections to joining in demurrer, in words and figures as follows:

District court of the United States, eastern district of Texas, at Galveston.

JOHN A. WILLIAMS
vs.
JOHN W. HODGE et als. } 632.

And now comes the defendants after the filing of the said plaintiff's demurrer to the evidence, and say that the said demurrer only states circumstantial evidence tending and conducing to prove the facts set forth and alleged in said defendants first plea to the jurisdiction of this court; and they pray the judgment of the court whether the said defendants shall be required to join in the demurrer until the same be so framed as to state the said circumstances tends or conduces to prove.

ALLEN & HALE,
Attys. for Defendants.

And afterwards, on the 30th day of July, 1858, the defendants filed their objection to joinder in the pltff's demurrer, in words and figures, as follows:

District court of the United States, eastern district of Texas, at Galveston.

And now come the said defendants, after the court has overruled their general objections to join in the demurrer to evidence interposed by the plaintiff, and reserving their exception to the said ruling, now under the direction of the court, proceed to specify the particular facts, other than the general facts alleged in their plea to the jurisdiction, which the circumstantial evidence stated in said demurrer conduces and tends to prove, as follows:

First. That the conveyances set forth in said demurrer are made by Thomas M. League, by his attorney in fact, Robert Hughes, to the plaintiff, and the other made by James Power, and John, and Dolores Wilder, to said plaintiff, were made and contrived for the purpose of causing suits to be brought in the name of said plaintiff in this court, for the benefit of Tomasa Power, James Power, John, and Dolores Wilder, and the other heirs of James Power, deceased, and Robert Hughes, who all were at the time of the commencement of this suit citizens of the State of Texas.

Second. That no consideration money was ever paid by said plaintiff for said conveyances, and that the nominal consideration are enormously disproportioned to the true value of the land.

Third. That one-third of the interest nominally vested in said Williams, by said conveyances, is held by him, for the benefit of Robert Hughes, and really belongs to said Hughes, and was so held at the time of the commencement of this suit, and the other two-thirds are and were held for the benefit of the widow and heirs of James Power, and really belong to them.

Fourth. That the real parties in interest in this suit at the time of the commencement thereof, were citizens of the State of Texas.

Wherefore the said defendants pray the judgment of the court whether they shall be required to join in the demurrer until the above stated facts are admitted thereby.

ALLEN & HALE. Atty's for Deft's.

And afterwards, on the 30th day of July, 1830, the plaintiff filed an amendment to his demurrer to evidence, in words and figures, as follows:

The United States of America, eastern district of Texas, to wit:

District court at Galveston, July term, 1858.

JOHN A. WILLIAMS
v.
JOHN W. HODGE et als. } Trespass to try title, &c.

And now comes again the plaintiff aforesaid, by his attorney, and the court having upon motion of the defendants aforesaid, by their attorney, required him, said plaintiff, (said plaintiff objecting and excepting thereto,) to admit the facts hereinafter set out, before said defendants should be required to join in the demurrer to the defendants' evidence taken on the issue herein, the said plaintiff now by the way of amendment, and for the purpose of making said admission, amends his said demurrer by inserting therein, on the last page thereof, before the last paragraph, the following words, to wit:

"And the said plaintiff admits that the nominal considerations of the deeds given in evidence from Thomas M. League, by his attorney in fact, Robert Hughes, and from James Power, and John Wilder, and Dolores Wilder, his wife, to John A. Williams, both dated the third day of November, 1858, was enormously disproportioned to the intrinsic value of the land, and that no consideration money was ever paid for said conveyances; that one-third of the interest nominally vested in John A. Williams, by the before mentioned two deeds of conveyance, is held by him for the benefit of Robert Hughes, and really belongs to said Hughes."

And said plaintiff further amends by inserting in *in* said demurrer, before the second paragraph thereof, the following words: "It was also proved, that shortly after the conveyance from James Power to Thomas M. League was made, several suits were commenced in pursuance of said conveyance by League, as a citizen of the State of Maryland, against citizens of the State of Texas, claiming the lands mentioned in said conveyance adversely to Power, among which suits was one entitled Thomas M. League against William H. Jones et als. These suits were brought in this court by Robert Hughes, as attorney. In the suit of League vs. Jones et als., the defendants interposed a plea to the jurisdic-

tion of the court, similar to the present plea. This plea was on demurrer overruled by the court, but on a writ of error to the Supreme Court of the United States, a decision was made by that court, in December, 1855, to the effect that the real interest in the property described in the conveyance made to League, was still in James Power; that the conveyance was colorable, as far as the jurisdiction of this court was concerned, and could not sustain the jurisdiction, and by the judgement of the Supreme Court the judgment of this court was reversed. All which is admitted to be true.

ROB. HUGHES, for Plaintiff.

And afterwards, on the 30th day of July, 1858, the defendants filed joinder to plaintiff's demurrer to evidence, in words and figures, as follows:

District court of the United States, E. district of Texas, at Galveston.

JOHN A. WILLIAMS
v.
JOHN J. HODGE et als.

And the said defendants, inasmuch as they have shown to the jury sufficient matter upon their part, which the said plaintiff doth not deny, or in any manner answer, now reserving all their objections to the demurrer to the evidence pleaded by the said plaintiff, and their exceptions to the ruling of the court thereon, and under the order of the court, join in the said demurrer, as amended under the directions of the court, and pray judgment, whether the court can or ought to take cognizance of the plaintiff's action, or has in law jurisdiction thereof.

ALLEN & HALE, Atty's for Def'ts.

And afterwards, on the 30th day of July, A. D. 1858, the court here made an order in this cause in words and figures as follows, to wit:

JOHN A. WILLIAMS
v.
JOHN W. HODGE et als. } 632.

This day come the plaintiff, by his attorney, and the defendants also appeared for the purpose of mantaining their pleas to jurisdiction of this court, and the demurrers of the plaintiff to the two pleas, to the jurisdiction of the court pleaded by the defendants, coming on to be heard and were argued by counsel, because it seems to the court here, that the law upon these demurrers are for the plaintiff, it is considered by the court that the said demurrers be sustained, and the said pleas to the jurisdiction be overruled, but with leave to defendants to amend said

pleas. And thereupon, the defendants declined to amend the second of their pleas, relying upon the legal sufficiency thereof, and took leave to amend the first of their pleas, so as to remove the objection made by the demurrer thereto, and under such leave the defendants immediately placed their amendment to said plea; and the parties then announcing themselves ready for trial upon the said first plea as amended, thereupon came a jury of good and lawful men, to wit, Samuel Ayers, John Burke, Nathan Smith, Francis J. Parker, Robert D. Johnson, John Corbit, Wilbur Cherry, Might S. Andrews, Might Steeper, James Kelso, Jacob Helfenstein, and David Wabelee, who, being duly elected, tried, and sworn, and the testimony having been all introduced before the jury, the plaintiff demurred to the evidence, and offered to file his demurrer; whereupon, the defendants objected to the filing of any demurrer to the evidence, and the withdrawal of the case from the jury, but their objection was overruled, and the demurrer was filed; and thereupon, the defendants objected to joining in the demurrer, and filed their objections in writing, praying the judgment of the court; whereupon, after due consideration, it was considered by the court that the defendants be required to join in the demurrer, unless the defendants chose to point out the particular facts which the evidence stated in said demurrer conduced to prove; and the defendants reserving their objection to this ruling, thereupon filed their objections to said joinder, stating therein the particular facts which the evidence, in their opinion, conduced to prove. And after argument, it was considered by the court that the plaintiff be required to admit expressly in his demurrer to the evidence certain facts set forth in the said objections of the defendants, and such admissions is thereupon now made by the plaintiff; and thereupon, it is considered by the court that the defendants be required to join in the demurrer as thus amended, which is now done by the defendants.

And afterwards, on the 31st day of July, 1858, the court here made an order in this cause in words and figures, as follows:

JOHN A. WILLIAMS
vs.
J. W. HODGE et als. } 632.

The argument in this cause upon the demurrer to the evidence was concluded, and the court took time to consider of its decision.

And afterwards, on the third day of August, A. D. 1858, the court here made an order in this cause in words and figures, as follows:

JOHN A. WILLIAMS
v.
J. W. HODGE et als. } 632.

And now again came the said parties, by their attorneys, and

the court having considered the plaintiff's demurrer to the evidence in this cause, in which the defendants had joined, and being now fully advised thereon, because it now seems to the court that the law upon said demurrer is for the defendants, and that the court has no jurisdiction of the said plaintiff's action, it is now considered and ordered by the court that the said action be dismissed for want of jurisdiction, that the plaintiff take nothing by his suit, and the defendants go hence without day.

And afterwards, on the fourth day of August, A. D. 1858, the defendants filed a bill of exceptions to the rulings of the court, in words and figures, as follows:

District court of the United States, eastern district of Texas, at Galveston.

JOHN A. WILLIAMS
v.
JOHN W. HODGE et als.

Be it remembered, that upon the trial of this cause before the jury, upon the issue upon the first plea of the defendants to the jurisdiction of the court, the defendants, to maintain the issue upon their part, called as a witness Robert Hughes, who, being sworn, testified that he was the counsel employed by the plaintiff in this cause to conduct the present suit and others in this court; that he was employed in that capacity about the time when the deeds to said plaintiff, introduced in evidence, were made; that he had previously been the attorney and counsel of James Power and Thomas M. League in reference to the same lands; that he drew or prepared the deeds to the plaintiff before mentioned, and that he was the attorney of the widow and heirs of James Power in reference to other lands embraced in the conveyance from Power to League. Whereupon, said witness was asked by the counsel for the defendants what agreement, understanding, or contract he had with said plaintiff for his fee, or compensation for his services, in respect to the lands embraced in the deeds to Williams, and whether he was or not to receive for his fee a portion of the said lands; to which question the said witness declined to answer, on the ground that all the knowledge he had respecting the subject matter of the question, was obtained in the course of his professional employment by said plaintiff, and in consequence of such employment. The counsel for the defendants insisted that the witness had no right upon the ground stated to decline to answer the question proposed, and asked the court to direct the witness to answer it; but the court was of opinion that the ground mentioned by the witness was sufficient, and refused to direct him to answer said question. To which refusal of the court the defendants, by their counsel, at the time excepted, and tender this their bill of exceptions, which they pray may be signed,

sealed, and made a part of the record of this cause, and the same is now done accordingly.

July 30, 1858. [SEAL.]

And thereupon, and after all the evidence upon the issue in the first plea to the jurisdiction of the court had been adduced to the jury, and the testimony had closed, but before the jury had retired, the counsel for the plaintiff offered to file a demurrer to the evidence, to which the counsel for the defendants objected, upon the ground that allowing the demurrer to the evidence in suits at common law, where the value in controvercy exceeded twenty dollars, was contrary to the seventh amendment to the constitution of the United States; but the court overruled this objection, and permitted the demurrer to be filed; to which ruling of the court the defendants, by their counsel, at the time excepted, and tender this their bill of exceptions, which they pray may be signed, sealed, and made a part of the record of this cause, and the same is done accordingly.

JOHN C. WATROUS. [SEAL.]

July 30th, 1858.

And afterwards the defendants, by their attorney, filed the following assignment of errors, in words and figures as follows, viz:

The United States of America, eastern district of Texas, to wit:

In the district court of the United States, at Galveston.

JOHN A. WILLIAMS
vs.
JOHN W. HODGE. } Upon writ of error.

And now comes the plaintiff in error, the said John A. Williams, by his attorney, and says that in the record and proceedings and in the judgment rendered in this court, that there is manifest error in this:

First. The court, before requiring the defendants in error to join in the plaintiff's demurrer to evidence, required the plaintiff to admit certain facts stated by defendant in error.

Second. The court rendered judgment on the demurrer of the plaintiff in error to the evidence of the defendant in error, in favor of said defendant in error, when said judgment should have been for the said plaintiff.

Third. Upon the facts set out upon the demurrer of plaintiff to defendants' evidence, gave judgment for said defendant, when said judgment should have been for plaintiff, all which said plaintiff is ready to verify; whereupon, he prays the said judgment in the supreme court be reversed, &c.

ROB. HUGHES,
For Plaintiff in Error.

And afterwards, viz., on the seventh day of August, 1858, the

following writ of error was sued out by the defendants, in words and figures, as follows:

"United States of America, ss.

The President of the United States of America to the honorable the judge of the district court of the United States for the district of Texas. [SEAL.]

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said district court before you, wherein John A. Williams is plaintiff and J. W. Hodge, John W. Hunter, Heywood Hunter, Thomas Coleman, and Young Coleman are defendants, a manifest error hath happened, to the great damage of the defendants, as by their complaint appears, we being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be given therein, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of December next, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and custom of the United States should be done.

Witness the honorable Roger B. Taney, chief justice of the said Supreme Court, this 7th day of August, A. D. 1858.

JAMES LOVE, Clerk.

The United States of America, ss.

The President of the United States of America to J. W. Hodge, John W. Hunter, Haywood Hunter, Thomas Coleman, and Young Coleman, or to Ebenezer Allen and William G. Hale, the attorneys of record, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the first Monday of December next, pursuant to a writ of error issued from the clerk's office of the district court of the United States for the eastern district of Texas, wherein John A. Williams is plaintiff in error and you are defendants in error, to show cause, if any there be, why a judgment rendered by the said court on the third day of August, A. D. 1858, against said plaintiff in error should not be reversed, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Roger B. Taney, chief justice of said Supreme Court of the United States. Done at the city of Galveston, this seventh day of August, A. D. 1858.

JOHN C. WATROUS.

Received the 7th day of August, 1838, and on the second day of November, 1858, I served Wm. G. Hall, Esq., with a true copy of the within notice. BEN. McCULLOCH, U. S. M.
By J. A. H. CLEVELAND, Dep.

And afterwards, viz., on the seventh day of August, A. D. 1858, the plaintiff in error filed the following bond, to wit:

The United States of America, eastern district of Texas, ss.

Know all men by these presents, that we, John A. Williams, as principal, and Robert Hughes and James H. Hughes, as sureties, are held and firmly bound unto J. W. Hodge, John W. Hunter, Haywood Hunter, Thomas Coleman, and Young Coleman, in the just and full sum of two hundred and fifty dollars, to be paid to the said parties, or either of them, or their certain attorney, executors, administrators, and assigns, to which payment well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents, sealed with our seals, (using scrawls for seals,) and dated this the seventh day of August, A. D. eighteen hundred and fifty-eight. For that whereas lately, at a term of district court of the United States for the eastern district of Texas, begun and held at the city of Galveston, on the first Monday of July, A. D. 1858, in a suit therein depending, wherein the said John A. Williams was plaintiff, and the said J. W. Hodge, John W. Hunter, Haywood Hunter, Thomas Coleman, and Young Coleman were defendants, a judgment was rendered against the said plaintiff, and the said plaintiff having sued out a writ of error to the Supreme Court of the United States, to be held at Washington on the first Monday of December next, to reverse said judgment, and a citation to said defendants, citing and admonishing them to be and appear before the said Supreme Court at said term as aforesaid.

Now, the condition of the above obligation is such, that if the said John A. Williams shall fail to prosecute the said suit to effect, and answer all damages and costs if he fail to make the same good, then the above obligation to be void, otherwise to remain in full force and virtue.

JOHN A. WILLIAMS, [SEAL.]
By his atto.
ROB. HUGHES.
ROB. HUGHES, [SEAL.]
JAMES H. HUGHES, [SEAL.]
By his atto. in fact,
ROB. HUGHES.

Signed, sealed, and delivered in presence of—

Approved: JOHN C. WATROUS.